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HOUSE BILL 84
47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005
INTRODUCED BY
Mimi Stewart

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO EDUCATION; CLARIFYING, CORRECTING AND RECONCILING SECTIONS OF THE PUBLIC SCHOOL CODE TO COMPLY WITH THE EDUCATION REFORM OF 2003; DEFINING "TEACHER"; PROVIDING FOR A RESEARCH-BASED READING ASSESSMENT FOR KINDERGARTEN THROUGH GRADE TWO; CLARIFYING THAT SCHOOL BOARDS APPROVE ANNUAL BUDGETS; CLARIFYING THE CHAIN OF COMMAND FOR TERMINATION AND DISCHARGE OF SCHOOL PERSONNEL; ALLOWING HEALTH EDUCATION AS AN ELECTIVE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS. --As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to

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1 assess the progress that a student, a public school or school
2 district or the state makes toward improving student
3 achievement;

4 B. "commission" means the public education
5 commission;

6 C. "department" means the public education
7 department;

8 D. "forty-day report" means the report of qualified
9 student membership of each school district and of those
10 eligible to be qualified students but enrolled in a private
11 school or a home school for the first forty days of school;

12 E. "home school" means the operation by the parent
13 of a school-age person of a home study program of instruction
14 that provides a basic academic educational program, including
15 reading, language arts, mathematics, social studies and
16 science;

17 F. "instructional support provider" means a person
18 who is employed to support the instructional program of a
19 school district, including educational assistant, school
20 counselor, social worker, school nurse, speech-language
21 pathologist, psychologist, physical therapist, occupational
22 therapist, recreational therapist, interpreter for the deaf and
23 diagnostician;

24 G. "licensed school employee" means teachers,
25 school administrators and instructional support providers;

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1 H. "local school board" means the policy-setting
2 body of a school district;

3 I. "local superintendent" means the chief executive
4 officer of a school district;

5 J. "parent" includes a guardian or other person
6 having custody and control of a school-age person;

7 K. "private school" means a school, other than a
8 home school, that offers on-site programs of instruction and
9 that is not under the control, supervision or management of a
10 local school board;

11 L. "public school" means that part of a school
12 district that is a single attendance center in which
13 instruction is offered by one or more teachers and is
14 discernible as a building or group of buildings generally
15 recognized as either an elementary, middle, junior high or high
16 school or any combination of those and includes a charter
17 school;

18 M. "school" means a supervised program of
19 instruction designed to educate a student in a particular
20 place, manner and subject area;

21 N. "school administrator" means a person licensed
22 to administer in a school district and includes school
23 principals and central district administrators;

24 O. "school-age person" means a person who is at
25 least five years of age prior to 12:01 a.m. on September 1 of

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1 the school year and who has not received a high school diploma
2 or its equivalent. A maximum age of twenty-one shall be used
3 for a person who is classified as special education membership
4 as defined in Section [~~22-8-2~~] 22-8-21 NMSA 1978 or as a
5 resident of a state institution;

6 P. "school building" means a public school, an
7 administration building and related school structures or
8 facilities, including teacher housing, that is owned, acquired
9 or constructed by the school district as necessary to carry out
10 the functions of the school district;

11 Q. "school bus private owner" means a person, other
12 than a school district, the department, the state or any other
13 political subdivision of the state, that owns a school bus;

14 R. "school district" means an area of land
15 established as a political subdivision of the state for the
16 administration of public schools and segregated geographically
17 for taxation and bonding purposes;

18 S. "school employee" includes licensed and
19 nonlicensed employees of a school district;

20 T. "school principal" means the chief instructional
21 leader and administrative head of a public school;

22 U. "school year" means the total number of contract
23 days offered by public schools in a school district during a
24 period of twelve consecutive months;

25 V. "secretary" means the secretary of public

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1 education;

2 W. "state agency" or "state institution" means the
3 New Mexico military institute, New Mexico school for the
4 ~~[visually handicapped]~~ blind and visually impaired, New Mexico
5 school for the deaf, New Mexico boys' school, girls' welfare
6 home, New Mexico youth diagnostic and development center,
7 Sequoyah adolescent treatment center, Carrie Tingley crippled
8 children's hospital, Las Vegas medical center and any other
9 state agency responsible for educating resident children;

10 X. "state educational institution" means an
11 institution enumerated in Article 12, Section 11 of the
12 constitution of New Mexico;

13 Y. "substitute teacher" means a person who holds a
14 certificate to substitute for a teacher in the classroom;

15 Z. "teacher" means a person who holds a level one,
16 two or three-A license and whose primary duty is classroom
17 instruction or the supervision, below the school principal
18 level, of an instructional program or whose duties include
19 curriculum development, peer intervention, peer coaching or
20 mentoring or serving as a resource teacher for other teachers;

21 AA. "certified school instructor" means a teacher
22 or instructional support provider; and

23 BB. "certified school employee" or "certified
24 school personnel" means a licensed school employee."

25 Section 2. Section 22-2C-4 NMSA 1978 (being Laws 2003,

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1 Chapter 153, Section 13, as amended) is amended to read:

2 "22-2C-4. STATEWIDE ASSESSMENT AND ACCOUNTABILITY
3 SYSTEM - INDICATORS--REQUIRED TESTS--ALTERNATIVE TESTS--LIMITS
4 ON ALTERNATIVES TO ENGLISH LANGUAGE READING TEST.--

5 A. The department shall establish a statewide
6 assessment and accountability system that is aligned with the
7 state academic content and performance standards and that
8 measures adequate yearly progress for each student, public
9 school and school district. Adequate yearly progress shall be
10 determined primarily by student academic achievement, as
11 demonstrated by statewide standards-based academic performance
12 tests; however, the department may include other indicators of
13 adequate yearly progress, including graduation rates for high
14 schools and attendance for elementary and middle schools.

15 B. The academic assessment program for adequate
16 yearly progress shall test student achievement as follows by
17 the school year indicated:

18 (1) for grades kindergarten through two,
19 [~~diagnostic and~~] standards-based tests on reading that include
20 phonemic awareness, phonics and comprehension by the
21 2003-2004 school year;

22 (2) for grades three through nine and for
23 grade eleven, standards-based academic performance tests in
24 mathematics, reading and language arts and social studies by
25 the 2005-2006 school year; provided that testing in ninth grade

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1 and testing in social studies shall not occur until the
2 legislature has provided funding for test development and
3 implementation;

4 (3) for grades three through nine, standards-
5 based academic performance writing assessment with the writing
6 assessment scoring criteria applied to the extended response
7 writing portions of the language arts criterion-referenced
8 tests by the 2005-2006 school year; and

9 (4) for one of grades three through five and
10 six through nine and for grade eleven, standards-based academic
11 performance tests in science by the 2007-2008 school year.

12 C. The department shall involve appropriate
13 licensed school employees in the development of the standards-
14 based academic performance tests.

15 D. All students shall participate in the academic
16 assessment program. The department shall adopt standards for
17 reasonable accommodations in academic testing for students with
18 disabilities and limited English proficiency, including when
19 and how accommodations may be applied. The legislative
20 education study committee shall review the standards prior to
21 adoption by the department.

22 E. Students who have been determined to be limited
23 English proficient may be allowed to take the standards-based
24 academic performance test in their primary language. A student
25 who has attended school for three consecutive years in the

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1 United States shall participate in the English language reading
2 test unless granted a waiver by the department based on
3 criteria established by the department. An English language
4 reading test waiver may be granted only for a maximum of two
5 additional years and only on a case-by-case basis. "

6 Section 3. Section 22-5-4 NMSA 1978 (being Laws 1967,
7 Chapter 16, Section 28, as amended) is amended to read:

8 "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES. --A local
9 school board shall have the following powers or duties:

10 A. subject to the rules of the department, develop
11 educational policies for the school district;

12 B. employ a local superintendent for the school
13 district and fix ~~his~~ the superintendent's salary;

14 C. review and approve the annual school district
15 budget;

16 D. acquire, lease and dispose of property;

17 E. have the capacity to sue and be sued;

18 F. acquire property by eminent domain pursuant to
19 the procedures provided in the Eminent Domain Code;

20 G. issue general obligation bonds of the school
21 district;

22 H. provide for the repair of and maintain all
23 property belonging to the school district;

24 I. for good cause and upon order of the district
25 court, subpoena witnesses and documents in connection with a

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1 hearing concerning any powers or duties of the local school
2 board;

3 J. except for expenditures for salaries, contract
4 for the expenditure of money according to the provisions of the
5 Procurement Code;

6 K. adopt rules pertaining to the administration of
7 all powers or duties of the local school board;

8 L. accept or reject any charitable gift, grant,
9 devise or bequest. The particular gift, grant, devise or
10 bequest accepted shall be considered an asset of the school
11 district or the public school to which it is given;

12 M offer and, upon compliance with the conditions
13 of such offer, pay rewards for information leading to the
14 arrest and conviction or other appropriate disciplinary
15 disposition by the courts or juvenile authorities of offenders
16 in case of theft, defacement or destruction of school district
17 property. All such rewards shall be paid from school district
18 funds in accordance with rules promulgated by the department;
19 and

20 N. give prior approval for any educational program
21 in a public school in the school district that is to be
22 conducted, sponsored, carried on or caused to be carried on by
23 a private organization or agency. "

24 Section 4. Section 22-10A-21 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 113, as amended) is amended to read:

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1 "22-10A-21. EMPLOYMENT CONTRACTS-- DURATION. --

2 A. All employment contracts between [~~local~~] a
3 school [~~boards~~] district or state agency and [~~certified~~]
4 licensed school [~~personnel and between governing authorities of~~
5 ~~state agencies and certified school instructors~~] employees
6 shall be in writing on forms approved by the [~~state board~~]
7 department. These forms shall contain and specify the term of
8 service, the salary to be paid, the method of payment, the
9 causes for termination of the contract and other provisions
10 required by [~~the regulations of the state board~~] rules of the
11 department.

12 B. All employment contracts between [~~local~~] a
13 school [~~boards~~] district or state agency and [~~certified~~]
14 licensed school [~~personnel and between governing authorities of~~
15 ~~state agencies and certified school instructors~~] employees
16 shall be for a period of one school year except:

17 (1) contracts for less than one school year
18 are permitted to fill personnel vacancies [~~which~~] that occur
19 during the school year;

20 (2) contracts for the remainder of a school
21 year are permitted to staff programs when the availability of
22 funds for the programs is not known until after the beginning
23 of the school year;

24 (3) contracts for less than one school year
25 are permitted to staff summer school programs and to staff

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1 federally funded programs in which the federally approved
2 programs are specified to be conducted for less than one school
3 year;

4 (4) contracts not to exceed three years are
5 permitted for [~~certified~~] school administrators in public
6 schools who are engaged in administrative functions for more
7 than one-half of their employment time; and

8 (5) contracts not to exceed three years are
9 permitted at the discretion of the local [~~school board~~]
10 superintendent for [~~certified~~] licensed school [~~instructors~~]
11 employees in public schools or state agencies who have been
12 employed in the school district for three consecutive school
13 years.

14 C. Persons employed under contracts for periods of
15 less than one school year as provided in Paragraphs (1) and (2)
16 of Subsection B of this section shall be accorded all the
17 duties, rights and privileges of the [~~certified~~] School
18 Personnel Act.

19 D. In determination of eligibility for unemployment
20 compensation rights and benefits for [~~certified~~] licensed
21 school [~~instructors~~] employees where those rights and benefits
22 are claimed to arise from the employment relationship [~~between~~
23 ~~governing authorities of state agencies or local school boards~~
24 ~~and certified school instructors~~], that period of a year not
25 covered by a school year shall not be considered an

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1 unemployment period.

2 E. Except as provided in Section [~~22-10-12~~]
3 22-10A-22 NMSA 1978, a person employed by contract pursuant to
4 this section has no legitimate objective expectancy of
5 reemployment, and no contract entered into pursuant to this
6 section shall be construed as an implied promise of continued
7 employment pursuant to a subsequent contract."

8 Section 5. A new section of the School Personnel Act,
9 Section 22-10A-21.1 NMSA 1978, is enacted to read:

10 "22-10A-21.1. [NEW MATERIAL] DEFINITIONS-- STATE AGENCY
11 COVERAGE. --

12 A. As used in Sections 22-10A-21 through 22-10A-30
13 NMSA 1978:

14 (1) "local superintendent" includes the
15 governing authority of a state agency; and

16 (2) "school principal" includes other school
17 district personnel who have authority to supervise school
18 employees and to correct their performance and recommend
19 termination or discharge; "school principal" also includes the
20 personnel of a state agency who have authority to supervise
21 licensed school employees of the state agency.

22 B. Licensed school employees in state agencies are
23 subject to the School Personnel Act. Employees of state
24 agencies who are not covered by the Personnel Act and who were
25 covered by the provisions of the School Personnel Act prior to

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1 the effective date of this 2005 act shall continue to be
2 covered by the provisions of the School Personnel Act. "

3 Section 6. Section 22-10A-22 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 114, as amended) is amended to read:

5 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION. --

6 A. Each school principal shall recommend to the
7 local superintendent the reemployment or termination of each
8 licensed school employee under the principal's supervision. On
9 or before the last day of the school year of the existing
10 employment contract, the local [~~school board or the governing~~
11 ~~authority of the state agency~~] superintendent shall serve
12 written notice of reemployment or termination on each
13 [~~certified~~] licensed school [~~instructor~~] employee employed by
14 the school district or state agency. A notice of reemployment
15 shall be an offer of employment for the ensuing school year. A
16 notice of termination shall be a notice of intention not to
17 reemploy for the ensuing school year.

18 B. Failure of the local [~~school board or the~~
19 ~~governing authority of the state agency~~] superintendent to
20 serve a written notice of reemployment or termination on a
21 [~~certified~~] licensed school [~~instructor~~] employee shall be
22 construed to mean that notice of reemployment has been served
23 upon the [~~person~~] licensed school employee for the ensuing
24 school year according to the terms of the existing employment
25 contract but subject to any additional compensation allowed

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1 other [~~certified~~] licensed school [~~instructors~~] employees of
2 like qualifications and experience employed by the school
3 district or state agency.

4 C. Nothing in this section shall be construed to
5 mean that failure of a local [~~school board or the governing~~
6 ~~authority of the state agency~~] superintendent to serve a
7 written notice of reemployment or termination shall
8 automatically extend a [~~certified~~] licensed school
9 [~~instructor's~~] employee's employment contract for a period in
10 excess of one school year. "

11 Section 7. Section 22-10A-23 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 115, as amended) is amended to read:

13 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING
14 CONTRACT.--

15 A. Each [~~certified~~] licensed school [~~instructor~~]
16 employee shall deliver to the local [~~school board of the school~~
17 ~~district or to the governing authority of the state agency in~~
18 ~~which~~] superintendent by whom the person is employed a written
19 acceptance or rejection of reemployment for the ensuing school
20 year within fifteen days from the following:

21 (1) the date written notice of reemployment is
22 served upon the [~~person~~] licensed school employee; or

23 (2) the last day of the school year when no
24 written notice of reemployment or termination is served upon
25 the [~~person~~] licensed school employee on or before the last day

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1 of the school year.

2 B. Delivery of the written acceptance of
3 reemployment by a ~~[eertified]~~ licensed school ~~[instructor]~~
4 employee creates a binding employment contract between the
5 ~~[eertified]~~ licensed school ~~[instructor]~~ employee and the
6 ~~[local]~~ school ~~[board or the governing authority of the]~~
7 district or state agency until the parties enter into a formal
8 written employment contract. Written employment contracts
9 between ~~[local]~~ school ~~[boards or governing authorities of]~~
10 districts or state agencies and ~~[eertified]~~ licensed school
11 ~~[instructors]~~ employees shall be executed by the parties not
12 later than ten days before the first day of a school year. "

13 Section 8. Section 22-10A-24 NMSA 1978 (being Laws 1986,
14 Chapter 33, Section 22, as amended) is amended to read:

15 "22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL
16 BOARD--GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES. --

17 A. ~~[A local school board or governing authority of~~
18 ~~a state agency may terminate an employee with fewer than three~~
19 ~~years of consecutive service for any reason it deems~~
20 ~~sufficient.]~~ A school principal may recommend the termination
21 of a school employee under the principal's supervision who has
22 worked for the school district or state agency for less than
23 three consecutive years for any reason the principal deems
24 sufficient. Based upon this recommendation, the local
25 superintendent may terminate the school employee. Upon request

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1 of the employee, the local superintendent [~~or administrator~~]
2 shall provide written reasons for the decision to terminate.
3 The reasons shall be provided within ten working days of the
4 request. The reasons shall not be publicly disclosed by the
5 superintendent [~~administrator, local school board or governing~~
6 ~~authority~~]. The reasons shall not provide a basis for
7 contesting the decision under the School Personnel Act.

8 B. Before terminating [~~a noncertified~~] an
9 unlicensed school employee, the local [~~school board or~~
10 ~~governing authority~~] superintendent shall serve the employee
11 with a written notice of termination.

12 C. An employee who has been employed by a school
13 district or state agency for three consecutive years and who
14 receives a notice of termination pursuant to either Section
15 [~~22-10-12~~] 22-10A-22 NMSA 1978 or this section may request an
16 opportunity to make a statement to the local [~~school board or~~
17 ~~governing authority~~] superintendent on the decision to
18 terminate him by submitting a written request to the local
19 superintendent [~~or administrator~~] within five working days from
20 the date written notice of termination is served [~~upon him~~].
21 The employee may also request in writing the reasons for the
22 termination action [~~to terminate him~~]. The local
23 superintendent [~~or administrator~~] shall provide written reasons
24 for the notice of termination to the employee within five
25 working days from the date the written request for a meeting

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1 and the written request for the reasons were received by the
2 local superintendent [~~or administrator. Neither~~]. The local
3 superintendent [~~or administrator nor the local school board or~~
4 ~~governing authority~~] shall not publicly disclose [~~its~~] the
5 reasons for termination.

6 D. A local [~~school board or governing authority~~]
7 superintendent may not terminate an employee who has been
8 employed by a school district or state agency for three
9 consecutive years without just cause.

10 E. The employee's request pursuant to Subsection C
11 of this section shall be granted if [~~he~~] the employee responds
12 to the local superintendent's [~~or administrator's~~] written
13 reasons as provided in Subsection C of this section by
14 submitting in writing to the local superintendent [~~or~~
15 ~~administrator~~] a contention that the decision to terminate
16 [~~him~~] was made without just cause. The written contention
17 shall specify the grounds on which it is contended that the
18 decision was without just cause and shall include a statement
19 of the facts that the employee believes support his contention.
20 This written statement shall be submitted within ten working
21 days from the date the employee receives the written reasons
22 from the local superintendent [~~or administrator~~]. The
23 submission of this statement constitutes:

24 (1) a representation on the part of the
25 employee that he can support his contentions; and

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1 (2) an acknowledgment that the [~~local school~~
2 ~~board or governing authority~~] school principal may offer the
3 causes for [~~its~~] his decision and any relevant data in [~~its~~]
4 the principal's possession in rebuttal of [~~his~~] the employee's
5 contentions.

6 F. A local [~~school board or governing authority~~]
7 superintendent shall meet to hear the employee's statement in
8 no less than five or more than fifteen working days after the
9 local [~~school board or governing authority~~] superintendent
10 receives the statement. The hearing shall be conducted
11 informally in accordance with the provisions of the Open
12 Meetings Act. The employee and the [~~local superintendent or~~
13 ~~administrator~~] school principal may each be accompanied by a
14 person of his choice. First, the [~~superintendent~~] school
15 principal shall present the factual basis for [~~his~~] the
16 determination that just cause exists for the termination of the
17 employee, limited to those reasons provided to the employee
18 pursuant to Subsection C of this section. Then, the employee
19 shall present his contentions, limited to those grounds
20 specified in Subsection E of this section. The [~~local~~] school
21 [~~board or governing authority~~] principal may offer such
22 rebuttal testimony as [~~it~~] he deems relevant. All witnesses
23 may be questioned by the [~~local~~] school [~~board or governing~~
24 ~~authority~~] principal, the employee or his representative and
25 the local superintendent [~~or administrator or his~~

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1 ~~representative~~. The local [~~school board or governing~~
2 ~~authority~~] superintendent may consider only such evidence as is
3 presented at the hearing and need consider only such evidence
4 as [~~it~~] he considers reliable. No record shall be made of the
5 proceeding. The local [~~school board or governing authority~~]
6 superintendent shall notify the employee and the [~~local~~
7 ~~superintendent or administrator~~] school principal of [~~its~~] the
8 decision in writing within five working days from the
9 conclusion of the meeting."

10 Section 9. Section 22-10A-25 NMSA 1978 (being Laws 1986,
11 Chapter 33, Section 23, as amended) is amended to read:

12 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--
13 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

14 A. An employee who is still aggrieved by a decision
15 of a local [~~school board or governing authority~~] superintendent
16 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may
17 appeal the decision to an arbitrator. A written appeal shall
18 be submitted to the local superintendent [~~or administrator~~]
19 within five working days from the receipt of the [~~local school~~
20 ~~board's or governing authority's~~] written decision [~~or the~~
21 ~~refusal of the board or authority to grant a hearing~~]. The
22 appeal shall be accompanied by a statement of particulars
23 specifying the grounds on which it is contended that the
24 decision was impermissible pursuant to Subsection E of Section
25 [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a statement of

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1 facts supporting the contentions. Failure of the employee to
2 submit a timely appeal or a statement of particulars with the
3 appeal shall disqualify ~~[him]~~ the employee for any appeal and
4 render the local ~~[school board's or governing authority's]~~
5 superintendent's decision final.

6 B. The local ~~[school board or governing authority]~~
7 superintendent and the employee shall meet within ten working
8 days from the receipt of the request for an appeal and select
9 an independent arbitrator to conduct the appeal. If the
10 parties fail to agree on an independent arbitrator, they shall
11 request the presiding judge in the judicial district in which
12 the employee's public school or state agency is located to
13 select one. The presiding judge shall select the independent
14 arbitrator within five working days from the date of the
15 parties' request.

16 C. A qualified independent arbitrator shall be
17 appointed who is versed in employment practices and school
18 procedures and who preferably has experience in the practice of
19 law. No person shall be appointed to serve as the independent
20 arbitrator who has any direct or indirect financial interest in
21 the outcome of the proceeding, has any relationship to any
22 party in the proceeding, is employed by the ~~[local]~~ school
23 ~~[board or governing authority]~~ district or state agency or is a
24 member of or employed by any professional or labor organization
25 of which the employee is a member.

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1 D. Appeals from the decision of the local [~~school~~
2 ~~board or governing authority~~] superintendent shall be decided
3 after a de novo hearing before the independent arbitrator. The
4 issue to be decided by the independent arbitrator is whether
5 there was just cause for the decision of the local [~~school~~
6 ~~board or governing authority~~] superintendent to terminate the
7 employee.

8 E. The de novo hearing shall be held within thirty
9 working days from the selection of the independent arbitrator.
10 The arbitrator shall give written notice of the date, time and
11 place of the hearing, and such notice shall be sent to the
12 employee and the local [~~school board or governing authority~~]
13 superintendent.

14 F. Each party has the right to be represented by
15 counsel at the hearing before the independent arbitrator.

16 G. Discovery shall be limited to depositions and
17 requests for production of documents on a time schedule to be
18 established by the independent arbitrator.

19 H. The independent arbitrator may issue subpoenas
20 for the attendance of witnesses and for the production of
21 books, records, documents and other evidence and shall have the
22 power to administer oaths. Subpoenas so issued shall be served
23 and enforced in the manner provided by law for the service and
24 enforcement of subpoenas in a civil action.

25 I. The rules of civil procedure shall not apply to

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1 the de novo hearing, but it shall be conducted so that both
2 contentions and responses are amply and fairly presented. To
3 this end, the independent arbitrator shall permit either party
4 to call and examine witnesses, cross-examine witnesses and
5 introduce exhibits. The technical rules of evidence shall not
6 apply, but, in ruling on the admissibility of evidence, the
7 independent arbitrator shall require reasonable substantiation
8 of statements or records tendered, the accuracy or truth of
9 which is in reasonable doubt.

10 J. The local [~~school board or governing authority~~]
11 superintendent has the burden of proof and shall prove by a
12 preponderance of the evidence that, at the time the notice of
13 termination was served on the employee, [~~the local school board~~
14 ~~or governing authority~~] the local superintendent had just cause
15 to terminate the employee. If the local [~~school board or~~
16 ~~governing authority~~] superintendent proves by a preponderance
17 of the evidence that there was just cause for [~~its~~] his action,
18 then the burden shifts to the employee to rebut the evidence
19 presented by the local [~~school board or governing authority~~]
20 superintendent.

21 K. The independent arbitrator shall uphold the
22 local [~~school board's or governing authority's~~]
23 superintendent's decision only if [~~it~~] the local superintendent
24 proves by a preponderance of the evidence that, at the time the
25 notice of termination was served on the employee, [~~the local~~

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1 ~~school board or governing authority] the local superintendent~~
2 had just cause to terminate the employee. If the local [~~school~~
3 ~~board or governing authority] superintendent~~ fails to meet
4 [its] the burden of proof or if the employee rebuts the proof
5 offered by the local [~~school board or governing authority]~~
6 superintendent, the arbitrator shall reverse the decision of
7 the local [~~school board or governing authority] superintendent~~.

8 L. No official record shall be made of the hearing.
9 Either party desiring a record of the arbitration proceedings
10 may, at [~~his~~] the party's own expense, record or otherwise
11 provide for a transcript of the proceedings; provided, however,
12 that the record so provided shall not be deemed an official
13 transcript of the proceedings nor shall it imply any right of
14 automatic appeal or review.

15 M The independent arbitrator shall render a
16 written decision affirming or reversing the action of the local
17 [~~school board or governing authority] superintendent~~. The
18 decision shall contain findings of fact and conclusions of law.
19 The parties shall receive actual written notice of the decision
20 of the independent arbitrator within ten working days from the
21 conclusion of the de novo hearing.

22 N. The sole remedies available under this section
23 shall be reinstatement or payment of compensation reinstated in
24 full but subject to any additional compensation allowed other
25 employees of like qualifications and experience employed by the

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1 school district or state agency and including reimbursement for
2 compensation during the entire period for which compensation
3 was terminated, or both, less an offset for any compensation
4 received by the employee during the period the compensation was
5 terminated.

6 O. Unless a party can demonstrate prejudice arising
7 from a departure from the procedures established in this
8 section and in Section [~~22-10-14~~] 22-10A-24 NMSA 1978, such
9 departure shall be presumed to be harmless error.

10 P. The decision of the independent arbitrator shall
11 be binding on both parties and shall be final and nonappealable
12 except where the decision was procured by corruption, fraud,
13 deception or collusion, in which case it shall be appealed to
14 the district court in the judicial district in which the public
15 school or state agency is located.

16 Q. Each party shall bear its own costs and
17 expenses. The independent arbitrator's fees and other expenses
18 incurred in the conduct of the arbitration shall be assigned at
19 the discretion of the independent arbitrator.

20 R. [~~Local~~] School districts shall file a record
21 with the department [~~of education~~] of all terminations and all
22 actions arising from terminations annually. "

23 Section 10. Section 22-10A-26 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 118, as amended) is amended to read:

25 "22-10A-26. EXCEPTED FROM PROVISIONS. -- Sections [~~22-10-12~~

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1 ~~through 22-10-14.1]~~ 22-10A-22 through 22-10A-25 NMSA 1978 do
2 not apply to the following:

3 A. a [~~certified~~] licensed school [~~instructor~~]
4 employee employed to fill the position of a [~~certified~~]
5 licensed school [~~instructor~~] employee entering military
6 service;

7 B. a person who is employed as a [~~certified~~] school
8 administrator; or

9 C. [~~a non-certified~~] an unlicensed school employee
10 employed to perform primarily district-wide management
11 functions. "

12 Section 11. Section 22-10A-27 NMSA 1978 (being Laws 1986,
13 Chapter 33, Section 24, as amended) is amended to read:

14 "22-10A-27. DISCHARGE HEARING--PROCEDURES. --

15 A. A local [~~school board or the governing authority~~
16 ~~of a state agency~~] superintendent may discharge a [~~certified~~]
17 school employee only for just cause according to the following
18 procedure:

19 (1) the [~~superintendent~~] school principal
20 shall serve a written notice of [~~his~~] intent to recommend
21 discharge on the [~~certified~~] school employee in accordance with
22 the law for service of process in civil actions; and

23 (2) the [~~superintendent~~] school principal
24 shall state in the notice of [~~his~~] intent to recommend
25 discharge, the cause for [~~his~~] the recommendation and shall

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1 advise the [~~certified~~] school employee of [~~his~~] the employee's
2 right to a discharge hearing before the local [~~school board or~~
3 ~~governing authority~~] superintendent as provided in this
4 section.

5 B. A [~~certified~~] school employee who receives a
6 notice of intent to recommend discharge pursuant to Subsection
7 A of this section may exercise his right to a hearing before
8 the local [~~school board or governing authority~~] superintendent
9 by giving the local superintendent [~~or administrator~~] written
10 notice of that election within five working days of [~~his~~] the
11 employee's receipt of the notice to recommend discharge.

12 C. The local [~~school board or governing authority~~]
13 superintendent shall hold a discharge hearing, no less than
14 twenty and no more than forty working days after [~~the local~~
15 ~~superintendent or administrator~~] he receives the written
16 election from the [~~certified~~] school employee, and shall give
17 the [~~certified~~] school employee at least ten days written
18 notice of the date, time and place of the discharge hearing.

19 D. [~~Each party, the local superintendent or~~
20 ~~administrator~~] The school principal and the [~~certified~~] school
21 employee may each be accompanied by a person of his choice.

22 E. The parties shall complete and respond to
23 discovery by deposition and production of documents prior to
24 the discharge hearing.

25 F. The local [~~school board or governing authority~~]

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1 superintendent shall have the authority to issue subpoenas for
2 the attendance of witnesses and to produce books, records,
3 documents and other evidence at the request of either party and
4 shall have the power to administer oaths.

5 G. The [~~local superintendent or administrator~~]
6 school principal shall have the burden of proving by a
7 preponderance of the evidence that, at the time of the notice
8 of intent to recommend discharge, [~~he had~~] there was just cause
9 to discharge the [~~certified~~] school employee.

10 H. The [~~local superintendent or administrator~~]
11 school principal shall present [~~his~~] evidence first, with the
12 [~~certified~~] school employee presenting [~~his~~] evidence
13 thereafter. The local [~~school board or governing authority~~]
14 superintendent shall permit either party to call, examine and
15 cross-examine witnesses and to introduce documentary evidence.

16 I. An official record shall be made of the hearing.
17 Either party may have one copy of the record at the expense of
18 the [~~local~~] school [~~board or governing authority~~] district or
19 state agency.

20 J. The local [~~school board~~] superintendent shall
21 render [~~its~~] a written decision within twenty days of the
22 conclusion of the discharge hearing. "

23 Section 12. Section 22-10A-28 NMSA 1978 (being Laws 1986,
24 Chapter 33, Section 25, as amended) is amended to read:

25 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--

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1 QUALIFICATIONS- - PROCEDURE- - BINDING DECISION. - -

2 A. A [~~certified~~] school employee aggrieved by a
3 decision of a local [~~school board or governing authority~~]
4 superintendent to discharge [~~him~~] the employee after a
5 discharge hearing held pursuant to Section [~~22-10-17~~] 22-10A-27
6 NMSA 1978 may appeal the decision to an independent arbitrator.
7 A written notice of appeal shall be submitted to the local
8 superintendent [~~or administrator~~] within five working days from
9 the receipt of the copy of the written decision of the local
10 [~~school board or governing authority~~] superintendent.

11 B. The local [~~school board or governing authority~~]
12 superintendent and the [~~certified~~] school employee shall meet
13 within ten calendar days from the receipt of the notice of
14 appeal and select an independent arbitrator to conduct the
15 appeal, or, in the event the parties fail to agree on an
16 independent arbitrator, they shall request the presiding judge
17 in the judicial district in which the public school or state
18 agency is located to select the independent arbitrator. The
19 presiding judge shall select the independent arbitrator within
20 five working days from the date of the parties' request.

21 C. A qualified independent arbitrator shall be
22 appointed who is versed in employment practices and school
23 procedures. No person shall be appointed to serve as the
24 independent arbitrator who has any direct or indirect financial
25 interest in the outcome of the proceeding, has any relationship

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1 to any party in the proceeding, is employed by the ~~[local]~~
2 school ~~[board or governing authority]~~ district or state agency
3 or is a member of or employed by any professional organization
4 of which the ~~[certified]~~ school employee is a member.

5 D. Appeals from the decision of the local ~~[school~~
6 ~~board or governing authority]~~ superintendent shall be decided
7 after a de novo hearing before the independent arbitrator. The
8 local ~~[school board or governing authority]~~ superintendent
9 shall have the burden of proving by a preponderance of the
10 evidence that, at the time of the ~~[notice of intent to~~
11 ~~recommend]~~ decision to discharge, the local superintendent ~~[or~~
12 ~~administrator]~~ had just cause to discharge the ~~[certified]~~
13 school employee. The local ~~[school board or governing~~
14 ~~authority]~~ superintendent shall present ~~[its]~~ evidence first,
15 with the ~~[certified]~~ school employee presenting ~~[his]~~ evidence
16 thereafter.

17 E. The hearing shall be held within thirty working
18 days from the selection of the independent arbitrator. The
19 independent arbitrator shall give written notice of the date,
20 time and place of the hearing, and such notice shall be sent to
21 the ~~[certified]~~ school employee and the local ~~[school board or~~
22 ~~governing authority]~~ superintendent.

23 F. Each party has the right to be represented by
24 counsel at the hearing before the independent arbitrator.

25 G. Discovery shall be limited to depositions and

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1 requests for production of documents on a time schedule to be
2 established by the independent arbitrator.

3 H. The independent arbitrator may issue subpoenas
4 for the attendance of witnesses and for the production of
5 books, records, documents and other evidence and shall have the
6 power to administer oaths. Subpoenas so issued shall be served
7 and enforced in the manner provided by law for the service and
8 enforcement of subpoenas in a civil action or in the manner
9 provided by the American arbitration association's voluntary
10 labor arbitration rules if that entity is used by the parties.

11 I. The rules of civil procedure shall not apply to
12 the hearing, but it shall be conducted so that both contentions
13 and responses are amply and fairly presented. To this end, the
14 independent arbitrator shall permit either party to call and
15 examine witnesses, cross-examine witnesses and introduce
16 exhibits. The technical rules of evidence shall not apply,
17 but, in ruling on the admissibility of evidence, the
18 independent arbitrator may require reasonable substantiation of
19 statements or records tendered, the accuracy or truth of which
20 is in reasonable doubt.

21 J. An official record shall be made of the hearing.
22 Either party may order a transcript of the record at ~~his~~ the
23 party's own expense.

24 K. The independent arbitrator shall render a
25 written decision affirming or reversing the action of the local

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1 [school board or governing authority] superintendent. The
2 decision shall contain findings of fact and conclusions of law.
3 The parties shall receive the written decision of the
4 independent arbitrator within thirty working days from the
5 conclusion of the hearing.

6 L. Unless a party can demonstrate prejudice arising
7 from a departure from the procedures established in this
8 section and in Section [~~22-10-17~~] 22-10A-27 NMSA 1978, such
9 departure shall be presumed to be harmless error.

10 M The decision of the independent arbitrator shall
11 be final and binding on both parties and shall be nonappealable
12 except where the decision was procured by corruption, fraud,
13 deception or collusion, in which case it may be appealed to the
14 court of appeals by filing a notice of appeal as provided by
15 the New Mexico rules of appellate procedure.

16 N. Each party shall bear its own costs and
17 expenses. The independent arbitrator's fees and other expenses
18 incurred in the conduct of the arbitration shall be assigned at
19 the discretion of the independent arbitrator."

20 Section 13. Section 22-10A-29 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 120, as amended) is amended to read:

22 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED
23 PERSONNEL. --

24 A. Payment of compensation to any [certified]
25 school [instructor] employee employed by a [~~local school board~~

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1 ~~or by the governing authority of a state agency and payment of~~
2 ~~compensation to any certified school administrator employed by~~
3 ~~a local school board]~~ school district or state agency shall
4 terminate as of the date, after a hearing, that a written copy
5 of the decision of the local [~~school board or the governing~~
6 ~~authority of the state agency]~~ superintendent to discharge the
7 person is served on the person. If the compensation of the
8 [~~person]~~ school employee discharged during the term of a
9 written employment contract is to be paid monthly during a
10 twelve-month period for services to be performed during a
11 period less than twelve months, the [~~person]~~ school employee
12 shall be entitled to a pro rata share of the compensation
13 payments due for the period during the twelve months in which
14 no services were to be performed.

15 B. In the event the action of the local [~~school~~
16 ~~board]~~ superintendent in discharging a [~~certified]~~ school
17 [~~instructor or administrator or the action of the governing~~
18 ~~authority of a state agency in discharging a certified school~~
19 ~~instructor]~~ employee is reversed on appeal, payment of
20 compensation to the person shall be reinstated in full but
21 subject to any additional compensation allowed other
22 [~~certified]~~ school [~~instructor or administrator]~~ employees of
23 like qualifications and experience employed by the school
24 district or state agency and including reimbursement for
25 compensation during the entire period the compensation was

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1 terminated less an offset for any compensation received by the
2 [person] school employee from a school district or state agency
3 during the period the compensation was terminated. "

4 Section 14. Section 22-10A-30 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 123, as amended) is amended to read:

6 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES. -- The
7 [~~state board~~] department shall prescribe by [~~regulations~~] rule
8 procedures to be followed by a [~~local~~] school [~~board or the~~
9 ~~governing authority of a~~] district or state agency in
10 supervising and correcting unsatisfactory work performance of
11 [~~certified~~] school [~~personnel~~] employees before notice of
12 intent to discharge is served upon them [~~and by the governing~~
13 ~~authority of a state agency in supervising and correcting~~
14 ~~unsatisfactory work performance of certified school instructors~~
15 ~~before notice of intent to discharge is served upon them~~ --
16 ~~These regulations~~]. The rules shall provide that written
17 records shall be kept on all action taken by a [~~local~~] school
18 [~~board or the governing authority of a~~] district or state
19 agency to improve [~~any person's~~] a school employee's
20 unsatisfactory work performance and all improvements made in
21 [~~the person's~~] that employee's work performance. These written
22 records shall be introduced as evidence at any hearing for the
23 [~~person~~] school employee conducted by the [~~local~~] school [~~board~~
24 ~~or the governing authority of the~~] district or state agency. "

25 Section 15. Section 22-13-1 NMSA 1978 (being Laws 2003,

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1 Chapter 153, Section 57) is amended to read:

2 "22-13-1. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS
3 REQUIRED--ACCREDITATION.--

4 A. The [~~state board~~] department shall require
5 public schools to address [~~state board approved~~] department-
6 approved academic content and performance standards when
7 instructing in specific [~~state board required~~] department-
8 required subject areas as provided in this section. A public
9 school or school district failing to meet these minimum
10 requirements shall not be accredited by the [~~state board~~]
11 department.

12 B. All first, second and third grade classes shall
13 provide daily instruction in reading and language arts skills,
14 including phonemic awareness, phonics and comprehension, and in
15 mathematics.

16 C. All first, second and third grade classes shall
17 provide instruction in art, music, [~~and~~] a language other than
18 English and health education.

19 D. In fourth through eighth grades, instruction
20 that meets academic content and performance standards shall be
21 provided in the following subject areas:

22 (1) reading and language arts skills, with an
23 emphasis on writing and editing for at least one year and an
24 emphasis on grammar and writing for at least one year;

25 (2) mathematics;

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- 1 (3) language other than English;
- 2 (4) communication skills;
- 3 (5) science;
- 4 (6) art;
- 5 (7) music;
- 6 (8) social studies;
- 7 (9) New Mexico history;
- 8 (10) United States history;
- 9 (11) geography; and
- 10 (12) physical fitness.

11 E. In fourth through eighth grades, school
12 districts shall offer electives that contribute to academic
13 growth and skill development and provide career and technical
14 education. Health education shall be offered as an elective."

15 Section 16. Section 22-13-1.1 NMSA 1978 (being Laws 1986,
16 Chapter 33, Section 5, as amended) is amended to read:

17 "22-13-1.1. GRADUATION REQUIREMENTS. --

18 A. At the end of grades eight through eleven, each
19 student shall prepare an interim next-step plan that sets forth
20 the coursework for the grades remaining until high school
21 graduation. Each year's plan shall explain any differences
22 from previous interim next-step plans, shall be filed with the
23 principal of the student's high school and shall be signed by
24 the student, the student's parent [~~or guardian~~] and the
25 student's guidance counselor or other school official charged

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1 with coursework planning for the student.

2 B. Each student must complete a final next-step
3 plan during the senior year and prior to graduation. The plan
4 shall be filed with the principal of the student's high school
5 and shall be signed by the student, the student's parent [~~or~~
6 ~~guardian~~] and the student's guidance counselor or other school
7 official charged with coursework planning for the student.

8 C. An individualized education program that meets
9 the requirements of Subsections A and B of this section and
10 that meets all applicable transition and procedural
11 requirements of the federal Individuals with Disabilities
12 Education Act for a student with a disability shall satisfy the
13 next-step plan requirements of this section for that student.

14 D. A local school board shall ensure that each high
15 school student has the opportunity to develop a next-step plan
16 and is reasonably informed about:

- 17 (1) curricular and course options;
18 (2) opportunities available that lead to
19 different post-high-school options; and
20 (3) alternative opportunities available if the
21 student does not finish a planned curriculum.

22 E. The secretary [~~of public education~~] shall:
23 (1) establish specific accountability
24 standards for administrators, counselors, teachers and school
25 district staff to ensure that every student has the opportunity

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1 to develop a next-step plan;

2 (2) promulgate rules for accredited private
3 schools in order to ensure substantial compliance with the
4 provisions of this section;

5 (3) monitor compliance with the requirements
6 of this section; and

7 (4) compile such information as is necessary
8 to evaluate the success of next-step plans and report annually,
9 by December 15, to the legislative education study committee
10 and the governor.

11 F. Successful completion of a minimum of twenty-
12 three units aligned to the state academic content and
13 performance standards shall be required for graduation. These
14 units shall be as follows:

15 (1) four units in English, with major emphasis
16 on grammar and literature;

17 (2) three units in mathematics, at least one
18 of which is equivalent to the algebra 1 level or higher;

19 (3) two units in science, one of which shall
20 have a laboratory component; provided, however, that with
21 students entering the ninth grade beginning in the 2005-2006
22 school year, three units in science shall be required, one of
23 which shall have a laboratory component;

24 (4) three units in social science, which shall
25 include United States history and geography, world history and

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1 geography and government and economics;

2 (5) one unit in physical education or other
3 physical activity;

4 (6) one unit in communication skills or
5 business education, with a major emphasis on writing and
6 speaking and that may include a language other than English;
7 and

8 (7) nine elective units and eight elective
9 units for students entering the ninth grade in the 2005-2006
10 school year that meet [~~state board~~] department content and
11 performance standards. Student service learning and health
12 education shall be offered as [~~an elective~~] electives.

13 G. The department shall establish a procedure for
14 students to be awarded credit through completion of specified
15 career technical education courses for certain graduation
16 requirements.

17 H. Final examinations shall be administered to all
18 students in all classes offered for credit.

19 I. A student shall not receive a high school
20 diploma who has not passed a state graduation examination in
21 the subject areas of reading, English, [~~math~~] mathematics,
22 writing, science and social science. The state graduation
23 examination on social science shall include a section on the
24 constitution of the United States and the constitution of New
25 Mexico. If a student exits from the school system at the end

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1 of grade twelve without having passed a state graduation
2 examination, [~~he~~] the student shall receive an appropriate
3 state certificate indicating the number of credits earned and
4 the grade completed. If within five years after a student
5 exits from the school system [~~he~~] the student takes and passes
6 the state graduation examination, [~~he~~] the student may receive
7 a high school diploma.

8 J. As used in this section:

9 (1) "final next-step plan" means a next-step
10 plan that shows that the student has committed or intends to
11 commit in the near future to a four-year college or university,
12 a two-year college, a trade or vocational program, an
13 internship or apprenticeship, military service or a job;

14 (2) "interim next-step plan" means an annual
15 next-step plan in which the student specifies post-high-school
16 goals and sets forth the coursework that will allow the student
17 to achieve those goals; and

18 (3) "next-step plan" means an annual personal
19 written plan of studies developed by a student in a public
20 school or other state-supported school or institution in
21 consultation with the student's parent [~~or guardian~~] and school
22 counselor or other school official charged with coursework
23 planning for the student.

24 K. The secretary [~~of public education~~] may
25 establish a policy to provide for administrative

1 interpretations to clarify curricular and testing provisions of
2 the Public School Code. "

3 Section 17. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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